10-547

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~1,017~~. 693

CHAUNCEY P. WILLIAMS, PLAINTIFF IN ERROR,

vs.

WILLIAM J. WEAVER, EDWARD BRENNAN, AND ROBERT H. WEIR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

FILED DECEMBER 18, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 1,047.

CHAUNCEY P. WILLIAMS, PLAINTIFF IN ERROR,

vs.

WILLIAM J. WEAVER, EDWARD BRENNAN, AND ROBERT H. WEIR.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

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1 Court of Appeals.

STATE OF NEW YORK, *ss.*

Pleas in the court of appeals, held at the capitol, in the city of Albany, on the 12th day of November, in the year of our Lord one thousand eight hundred and seventy-eight, before the judges of said court.

Witness, the Hon. Sanford E. Church, Chief Judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur, November 13th, 1878.

2 CHAUNCEY P. WILLIAMS, APPELLANT,
agst.
WILLIAM J. WEAVER & ORS., RESPONDENTS.

Be it remembered, that on the first day of October, in the year of our Lord one thousand eight hundred and seventy-seven, Chauncey P. Williams, the appellant in this action, came here into the court of appeals, by Hand, Hale & Swartz, his attorneys, and filed in the said court a notice of appeal and return thereto from the judgment of the general term of the Supreme Court of the State of New York, and William J. Weaver and ors., the respondents in said action, afterwards appeared in said Court of Appeals by Peckham & Tremain, their attorneys.

3 Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said court of appeals, having heard this cause argued by Mr. Matthew Hale, of counsel for the appellant, and Mr. Rufus W. Peckham, of counsel for the respondents, and after due deliberation had thereon, did order and adjudge that the judgment of the supreme court, appealed from in this action, be in all things affirmed. And it was further ordered and adjudged that the respondents recover against the appellant costs of appeal to this court.

And it was also further ordered, that the record aforesaid, and the proceedings in this court, be remitted to the said supreme court, there to be proceeded upon according to law.

4 Therefore, it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well as the notice of appeal and return thereto aforesaid as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the Supreme Court of the State of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be entered according to law, and which record now remains in the said supreme court before the justices thereof, &c.

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
ALBANY, *Nov.* 13, 1878.

I hereby certify, that the preceding record contains a correct transcript of the proceedings in said action in the court of appeals, with the papers originally filed therein attached thereto.

E. O. PERRIN, *Clerk.*

5 Supreme Court, County of Albany.

CHAUNCEY P. WILLIAMS, PLAINTIFF,
against
WILLIAM J. WEAVER, EDWARD BRENNAN, and ROBERT H. WEIR, DEFENDANTS.

To the above-named defendants.

You are hereby required to answer the complaint of the plaintiff in this action, which will be filed with the clerk of the county of Albany, and to serve a copy of your answer on us at our office, No. 25 North Pearl street, Albany, New York, within twenty days after the service hereof upon you, exclusive of the day of service. If you fail to so answer said complaint, the plaintiff will apply to the court for the relief demanded in the complaint.

HAND, HALE, SWARTZ & FAIRCHILD,
Plaintiff's Attorneys.

6 Supreme Court, County of Albany.

CHAUNCEY P. WILLIAMS
against
WILLIAM J. WEAVER, EDWARD BRENNAN, and ROBERT H. WEIR.

Complaint.
July 2, 1875.

The complaint of the above-named plaintiff respectfully shows:

That on and before the first day of September, 1874, the above-named plaintiff was the owner of four hundred and five shares of the capital stock of the National Albany Exchange Bank, a banking association duly organized under the authority of the United States, namely, under the act of Congress approved June 3rd, 1864, entitled an act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof. That the capital of said banking association was, at the time aforesaid, three hundred thousand dollars, and

7 that the greater portion of the property of said banking association then consisted of bonds of the United States deposited in pursuance of the laws of the United States with the treasurer of the United States.

That the said banking association was and is located in the Sixth ward of the city of Albany; that the above-named defendants were on and before the 1st day of September, 1874, have ever since been

and still are, the assessors of the city of Albany, constituting the board of assessors of said city. That the defendants as such assessors did, on or about the 1st day of September, 1874, wrongfully and without jurisdiction, and in violation of the laws of the United States, and without lawful authority, assess deponent in the assessment of taxes in said Sixth ward of said city for the year 1874, on the nominal or par value of said shares of said capital stock, without reference to the actual value thereof, deducting from such nominal or par value such sum as was in the same proportion to such nominal or par value as was the assessed valuation of real estate belonging to said association. That the whole amount
8 for which this plaintiff was so assessed by defendants on account of said shares was the sum of thirty-six thousand four hundred and fifty dollars ($36,450), being at the rate of ninety dollars for each of said shares. That the defendants as such board of assessors did sign and certify the assessment-roll of said Sixth ward, including the said assessment of this plaintiff on account of said shares, in the form prescribed by section nineteen of an act entitled an act to provide for the assessment and collection of taxes in the city of Albany, passed March 23rd, 1850," (being chapter 84 of the laws of 1850,) and did, as this plaintiff is informed and believes, on or before the first day of November, 1874, deliver the same to the supervisor of said Sixth ward, who delivered the same to the board of supervisors of the county of Albany, at their next meeting. That the said board of supervisors annexed to the name of plaintiff upon said assessment-roll, on account of the said assessment upon said shares, a tax of one thousand eight hundred and twenty-two
9 dollars and fifty cents ($1,822.50), and delivered said assessment-roll to the receiver of taxes of the city of Albany on or before the 15th day of December, 1874, having first *assessed* thereto their warrant under the hands and seals of said board of supervisors, or a majority of them, commanding such receiver to collect from the several persons named in said assessment-roll the several sums mentioned in the last column of said roll, opposite to their respective names, and to pay over the same in the manner directed in said warrant. That the said receiver upon receiving the said assessment-roll caused the notices required by article fourth of said chapter 84 of the laws of 1850, to be published and served, and on or about the day of April, 1875, issued his warrant under his hand and seal to the marshal of said city, duly designated by the common council of said city, commanding him to levy the tax with interest on the same at the rate of twelve per cent. per annum, to be calculated from the first day of February, 1875, by dis-
10 tress and sale of the goods and chattels of the person upon whose real or personal estate the said tax was apportioned, according to the said assessment and tax-roll, or of any goods and chattels in his possession wheresoever the same should be found within the city and county of Albany, and to pay the same to the

said receiver and return the same within thirty days after the date thereof. And the said marshal under and in pursuance of said warrant and in consequence of the illegal and unauthorized assessment above mentioned did, on or about the 30th day of April, 1875, levy on and seize certain national bank bills belonging to plaintiff, amounting to and of the value of nineteen hundred and eight dollars and forty-two cents ($1,908.42), property of this plaintiff, being the amount of said tax and interest and marshal's fees. And plaintiff further says that the taxation of plaintiff upon said shares was at a greater rate than is or than was assessed upon other moneyed capital in the hands of individual citizens of this
11 state; that the defendants, as such board of assessors, did not ascertain, or attempt to ascertain, the actual or market value of the said shares for which this plaintiff was assessed and taxed as aforesaid, and that individual citizens of this state, who were the owners of other moneyed capital than shares in any national banking association, were assessed by defendants and consequently taxed at a much less rate in proportion to the actual value of such other moneyed capital than plaintiff was assessed and taxed upon said shares.

And this plaintiff says, upon information and belief, that the defendants did in and by the assessments made by them in the year 1874, in nearly or quite every instance, assess other moneyed capital than shares of national banking associations at a much less rate than the rate assessed upon the said shares of plaintiff by the defendants as aforesaid, and thereby cause the taxation imposed upon the plaintiff as the owner of said shares of the said National Albany Exchange Bank to be at a greater rate than was
12 assessed upon other money capital in the hands of individual citizens of this state. And this plaintiff further says, upon information and belief, that other money capital than shares of national banking associations in the hands of individual citizens of this state was, in the year 1874 and in previous years, by the usual and general, if not universal practice, not only of the defendants but of assessors throughout this state, assessed and taxed at a much less rate, having regard to the actual value thereof, than the rate of assessment and taxation imposed upon said shares of plaintiff as aforesaid; and that by reason of the facts hereinbefore set forth, the said assessment upon the shares of plaintiff in said National Albany Exchange Bank was in violation of the laws of the United States and of this state without jurisdiction and void.

And this plaintiff further says that he is advised and believes and insists that the law of this state, under color of which the defendants made the said assessment upon the said shares of plaintiff,
13 namely, the act entitled an act authorizing the taxation of stockholders of banks and the surplus funds of savings banks, passed April 23, 1866, is in violation of the Constitution and laws of the United States so far as it authorizes the taxation of owners

of shares of national banking associations. And this plaintiff further says that he has by reason of this illegal and unauthorized assessment, made by defendants as aforesaid, sustained damage in the sum of $1,908\frac{42}{100}$ dollars, with interest from the 30th day of April, 1875.

Second. And for a further and separate cause of action the
14 plaintiff says that the persons and corporations hereinafter named were, on and before the first day of September, 1874, the owners of the numbers of shares hereinafter stated of the capital stock of the National Albany Exchange Bank, a banking association duly organized under the laws of the United States and located in the Sixth ward of the city of Albany, and that the greater portion of the property of said bank consisted of United States bonds deposited pursuant to law with the treasurer of the United States. That the defendants were, on or before the 1st day of September, 1874, *ever* since have been and still are the assessors of the city of Albany. That the defendants as such assessors did, on or about the first day of September, 1874, wrongfully and without lawful authority assess the said persons and corporations in the assessment of taxes in said Sixth ward of said city for the year 1874 on the nominal or par value of said shares without reference to the actual value thereof, deducting from such nominal or par value such sum as was in the same proportion to such nominal or
15 par value as was the assessed valuation of real estate belonging to said banking association, owned or held by such persons and corporations. That the whole number of shares was two thousand three hundred and thirty-six, for and on account of which said persons and corporations were assessed in the aggregate the sum of two hundred and ten thousand two hundred and forty dollars, being at the rate of ninety dollars for each of said shares; that the defendants as such board of assessors did sign and certify the said assessment-roll of the said Sixth ward, including the said assessment of said persons and corporations on account of said shares, as plaintiff is informed and believes, in the form prescribed by law, and delivered the same to the supervisor of the said Sixth ward, who delivered the same to the board of supervisors of the county of Albany at their next meeting. That the said board of supervisors annexed to the names of said persons and corporations respectively upon said assessment-roll, on account of the said assessments upon said shares, a tax of the amount hereinafter stated,
16 which tax, upon all the said shares of said persons and corporations, in the aggregate amounted to ten thousand five hundred and twelve dollars, and delivered said assessment-roll to the receiver of taxes of the city of Albany on or before the 15th day of December, 1874, having first annexed thereto their warrant commanding such receiver to collect from the several persons named in said assessment-roll the several sums mentioned in the last column of said roll opposite to their respective names, and to pay over

the same in the manner directed in said warrant. That the said receiver thereupon caused the notices required by law to be duly published and served, and on or about the day of April, 1875, issued his warrant under his hand and seal to the marshal of said city, duly designated by the common council of said city, commanding him to levy the tax, with interest at the rate of twelve per cent. per annum, by distress and sale of the goods and chattels of the persons upon whose real or personal estate the said
17 tax was apportioned, according to the said assessment and tax-roll, or of any goods and chattels in his possession wheresoever the same should be found within the city and county of Albany, and to pay the same to the said receiver and return the same within thirty days after the sale thereof; and the said marshal under and in pursuance of said warrant and in consequence of the illegal and unauthorized assessment above mentioned did, on or about the 30th day of April, 1875, levy on and seize in the manner prescribed by law for the sale of property seized for taxes, bank bills, the property of each of the said persons and coporations, in value amounting in the aggregate to eleven thousand one hundred and thirty and $\frac{72}{100}$ dollars ($11,130 $\frac{72}{100}$), being the aggregate amount of said tax and interest and marshal's fees. And plaintiff further says that the taxation of said persons and corporations upon said shares was at a greater rate than is or was then assessed upon other moneyed capital in the hands of individual citizens of this state. That the defendants as such assessors did not ascer-
18 tain or attempt to ascertain what was the actual or marked value of the said shares for which the said persons and corporations were respectively assessed and taxed as aforesaid, and that individual citizens of this state who were the owners of other moneyed capital than shares in any national banking association were assessed by defendants and consequently taxed at a much less rate in proportion to the actual value of such other moneyed capital than said persons and corporations were assessed and taxed upon ithe shares of said national banking association owned by them respectively as aforesaid.

And plaintiff says, upon information and belief, that the defendants did, in and by the assessments made by them in the year 1874, in nearly or quite every instance assess moneyed capital other than shares in national banking associations, at a much less rate than that assessed upon the said shares of said persons and corporations, and did thereby cause the taxation imposed upon said own-
19 ers of said shares of the said National Albany Exchange Bank to be at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of this state.

And this plaintiff further says, upon information and belief, that moneyed capital other than shares of the stock of the national banking associations in the hands of individual citizens of this state was, in the year 1874 and in previous years, by the usual and

general practice, not only of the defendants but of assessors throughout this state, assessed and taxed at a much less rate with reference to the actual value thereof, than the rate of assessment and taxation imposed upon said shares of said persons and corporations in said National Albany Exchange Bank, as aforesaid; and that by reason of the facts hereinbefore set forth, the said assessment upon the shares of said persons and corporations was in violation of the laws of the United States and of this state without jurisdiction and void.

And plaintiff further says that he is advised, and believes
20 and insists that the law of this state under color of which the defendants made the said assessment upon the shares of said persons and corporations is in violation of the Constitution and laws of the United States, so far as it authorizes the taxation of owners of shares of national banking associations. And this plaintiff further says, that the following is a list of the persons and corporations above referred to as owners of shares of said banking association. That each of said persons and corporations was the owner of the number of shares set opposite the name of said person or corporation in the said list, and was assessed thereon by the defendants as aforesaid the sum placed in the right-hand column opposite such name, viz:

Name of Shareholder.	No. Shares.	Amt. Assessed.
Mary E. Allen	25	$2,250
Estate C. W. Bender	50	4,500
William M. Bender	50	4,500
William J. Blackall	14	1,260
Anson H. Blackman	10	900
21 Estate Gould Blackman	10	900
Henry H. Bulkley	20	1,800
Martha P. Butler	10	900
Nicholas Clapper	11	990
Amelia A. Cobb	50	4,500
Thomas B. Cole	13	1,170
Thomas Comstock	20	1,800
Commerce Insurance Company	80	7,200
Theodore F. Cornell	25	2,250
Ann Darling	10	900
Estate William Dixon	10	900
Edward H. Durant	50	4,500
Gideon D. Eames	30	2,700
Milo R. Eames	20	1,800
Hester S. Emerson	10	900
Azuba G. Fairchild	5	450
Daniel H. Gardner	4	360
Charlotte Gardner	1	90
Sarah M. Gardner	2	180

William Gould		320	28,800
Sarah M. Gould		2	180
Estate of John Gould		8	720
" " Alex'r Greer		25	2,250
Thomas H. Greer		25	2,250
Silvester Hale		122	10,980
Ebenezer Hill		70	6,300
Harriet Hilton		10	900
Charles B. Lansing		25	2,250
	Mary L. G. Lewis	1	90
22	Shibloth McCoy	250	22,500
	James McElroy	5	450
William McElroy		100	9,000
Est. of James McNaughton		50	4,500
Peter McNaughton		50	4,500
Lansing Merchant		60	5,400
Henry T. Mesick		60	5,400
Mary Patrick		10	900
Spencer S. B. Peck		10	900
Nancy L. Peck		40	3,600
Henry C. Peck		10	900
Samuel S. Peck		10	900
Myron R. C. Peck		10	900
Estate of Mary E. Peckham		20	1,800
" " Amos Pilsbury		70	6,300
Robert C. Pruyn		10	900
Sarah and Agnes Pruyn		45	4,050
James Roy		10	900
Adam Shields		3	270
Eliz. F. Spoor		10	900
Wm. G. Thomas		100	9,000
Lemon Thompson		50	4,500
Wm. G. Thompson, Exc		20	1,800
Francis Vail		15	1,350
Cath. Van Schaack		10	900
James C. Vischer, Ex'r		5	450
Michael Warner		10	900
Clement Warren		20	1,800
	Est. of John F. Wendower	30	2,700
23	Geo. P. Wilson	15	1,350
	Abram F. Wilson	20	1,800
Josiah B. Williams		50	4,500
Est. of Abraham Wing		20	1,800

And plaintiff further says that the amount of the tax imposed upon each of the said above-named persons and corporations, under and in virtue of the said assessment, was in amount equal to five per cent. upon the said assessment, as appears in the foregoing list. And plaintiff further says that the value of the bank bills belonging to

said persons and corporations respectively, and seized by said marshal, pursuant to said warrant as aforesaid, for said tax, interest, and marshal's fees, was the sum hereinafter placed opposite the names of each of said persons and corporations, viz:

Mary E. Allen	$120	61
Estate of C. W. Bender	238	22
Wm. M. Bender	238	22
William J. Blackall	67	79
Anson H. Blakeman	48	42
Estate of Gould Blakeman	48	42
Henry H. Bulkley	96	85
24 Martha P. Butler	48	42
Nicholas Clapper	53	28
Amelia A. Cobb	238	22
Thomas B. Cole	62	95
Thomas Comstock	96	85
Commerce Ins. Co	379	38
Theodore F. Cornell	120	60
Ann Darling	48	42
Est. Wm. Dickson	48	42
Edwd. A. Durant	238	22
Gideon D. Eames	144	13
Milo R. Eames	96	85
Hester S. Emerson	48	42
Azula G. Fairchild	24	20
Daniel H. Gardner	19	35
Charlotte Gardner	4	83
Sarah M. Gardner	9	67
William Gould	1,508	52
Sarah M. Gould	9	67
Est. John Gould	38	74
" Alex. Greer	120	61
Thomas H. Greer	120	61
Sylvester Hale	576	97
Ebenezer Hill	332	31
Harriet Hilton	48	42
Charles B. Lansing	120	61
Mary L. G. Lewis	4	83
Shiboleth B. McCoy	1,179	18
James McElroy	24	20
25 W. M. McElroy	473	47
Est. Jas. McNaughton	238	22
Peter McNaughton	238	22
Lansing Merchant	285	27
Henry F. Mesick	285	27
Mary Patrick	48	42
Spencer S. B. Peck	48	42
Nancy L. Peck	191	18

Henry C. Peck	48 42
Samuel S. Peck	48 42
Myron R. C. Peck	48 42
Est. Mary E. Peckham	96 85
" Amos Pilsbury, C. P. Williams and A. V. DeWitt, executors	332 31
Robert C. Pruyn	48 42
Sarah and Agnes Pruyn	214 70
James Roy	48 42
Adam Shields	14 52
Eliz. F. Spoor	48 42
Wm. G. Thomas	473 47
Lemon Thompson	233 22
Wm. G. Thomas, executor	96 85
Francis Vail	72 63
Catharine Van Schaack	48 42
James C. Visscher, ex	24 20
Michael Warner	48 42
Clement Warren	96 85
Est. John T. Wendover	144 13
26 Geo. P. Wilson	72 63
Abram F. Wilson	96 85
Josiah B. Williams	238 22
Est. Abraham Wing	96 85

And plaintiff further says that said persons and corporations each sustained damage by reason of the above-mentioned illegal and unauthorized assessment made by the defendants in the sum last hereinbefore placed opposite the name of said person or corporation, and that the said persons and corporations and each of them, and the personal representatives of the deceased persons whose estates are mentioned in the above schedule, have duly assigned and transferred to this plaintiff all and each of their claims against the defendants by reason of the premises; wherefore the plaintiff demands judgment against the defendants for the sum of thirteen thousand and thirty-nine dollars and fourteen cents, with interest from the 30th day of April, 1875, besides costs.

HAND, HALE, SWARTZ & FAIRCHILD,
Att'ys for Plaintiff.

27 CITY AND COUNTY OF ALBANY, *ss.*

Chauncey P. Williams, the above-named plaintiff, being duly sworn, says that the foregoing complaint is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

C. P. WILLIAMS.

Sworn to before me, July 27th, 1875.

LOUIS HAENDEL,
Comr. of Deeds, Albany, N. Y.

28 Supreme Court, Albany County.

CHAUNCEY P. WILLIAMS
agst.
WILLIAM J. WEAVER, EDWARD BRENNAN, & Robert H. Weir. } Copy answer.

The above defendants, by Peckham & Tremain, their attorneys, answering the complaint of the plaintiff:

I. Deny any knowledge or information sufficient to form a belief whether, at the time mentioned in the complaint or at all, the greater or any portion of the property of National Albany Exchange Band consisted of bonds of the United States deposited in pursuance of the laws of the United States, or at all, with the treasurer of the United States.

II. They also deny that, on or about the first of September, 1874, or at *at* all at any time, these defendants, as assessors, or at all, wrongfully and without jurisdiction or in violation of any law of the United States or without lawful authority, did assess the
29 plaintiff or any person or corporation in the assessment of taxes in the Sixth ward of the city of Albany, for the year 1874, on the nominal or par value of the shares of the stock in said banking association, owned by the plaintiff or any other person or corporation without reference to the actual value thereof, deducting from such nominal or par value of said shares such sum as was in the same proportion to such nominal or par value as was the assessed valuation of real estate belonging to said association.

III. They deny that as a board of assessors or at all before the first day of November, or on said day, they delivered said assessment-roll of the Sixth ward of the city of Albany to the supervisor thereof; and they allege that it was not until many days thereafter (said first of November, 1874), that the said assessment-roll was delivered to the said supervisor. That before the said first of November, 1874, these defendants were served with a writ of certiorari, issued out of the Supreme Court of New York,
30 commanding them to certify to the general term of said court at a term to be held in Schenectady, on the second Tuesday of November, 1874, the assessment of this plaintiff and other shareholders in said National Albany Exchange Bank; such assessment being contained in the said assessment-roll of the said Sixth ward, mentioned in plff.'s complaint herein. That in pursuance of such writ sued out by the plaintiff herein, the said assessment was certified and returned to said court at the time mentioned in said writ, which was after November 1, 1874, and, therefore, the said assessment-roll was not and could not have been delivered to the supervisor of the Sixth ward until long after the first of November, 1874, and such failure to deliver said roll was caused by the plaintiff herein.

IV. The defendants deny any knowledge or information sufficient to form a belief whether the board of supervisors an-
31 nexed to the name of the plaintiff or other persons or corporations upon said assessment-roll on account of the said assessment, upon his or their said shares a tax of one thousand eight hundred and twenty-two $\frac{50}{100}$ dollars, or any other sum or sums whatever, or whether they delivered said roll to the receiver of taxes of the city of Albany, on or before the 15th day of December, 1874, or whether before such alleged delivery they first or ever annexed to said roll their warrant under their hands and seals, or under the hands and seals of a majority of them, commanding such receiver of taxes to collect from the persons named in such roll the amount mentioned therein, or to pay the same as directed in such alleged warrant. The defendants further deny any knowledge or information sufficient to form a belief whether upon the receipt of the aforesaid alleged assessment-roll and warrant, the receiver of taxes caused the notices or any of them required by article fourth of chapter 84 of the laws of 1850, to be published or served, or whether he ever issued his warrant under his hand or seal to the marshal
32 of said city, commanding him to levy the tax with interest on the same at the rate of twelve per cent. per annum, to be calculated from the first day of February, 1875, by distress, &c., as alleged in the complaint, or at all in any way.

V. The defendants deny that the said marshal under or in pursuance of said warrant and in consequence of any illegal or unauthorized assessment did, on or about the 30th day of April, 1875, levy on or seize certain national bank bills belonging to the plaintiff or any other persons or corporations, amounting to or of the value of $1,908.42, or any other sum or sums, the property of the plaintiff or of any other persons or corporations. The defendants deny that the taxation of plaintiff or of any other persons or corporations upon said shares was at a greater rate than is or than was assessed upon other moneyed capital in the hands of individual citizens of this state, or that the defendants did not ascertain or attempt to ascertain the actual or market value of the said shares for which the plaintiff was assessed or taxed, and they deny that individual citizens of this state who were the owners of other moneyed
33 capital than shares in any national banking association were assessed by defendants and consequently taxed at a much less rate in proportion to the actual value of such other moneyed capital than plaintiff was assessed or taxed upon said shares.

VI. The defendants deny that in any assessments made by them in the year 1874 they assessed other moneyed capital than shares of national banking associations at a much less rate than the rate assessed upon the shares of the plaintiff, and they deny that they caused the taxation imposed upon plaintiff or any other person or corporation as owner of the shares aforesaid to be at a greater rate

than was assessed upon other moneyed capital in the hands of individuals, citizens of this state.

The defendants further deny that other moneyed capital than shares of national banking associations in the hands of individual citizens of this state was, in the year 1874 or in previous years, by the usual or general or universal practice, either of defendants or of assessors throughout the state, assessed or taxed at a much
34 less rate, having regard to the actual value thereof, than the rate of assessment or taxation imposed upon said shares of plaintiff or of any other person or corporation, and they deny that the said assessment upon plaintiff's shares or the shares of any other person or corporation, was in violation of any law of the United States or of this state, and they deny that the assessment upon plff.'s shares or the shares of any other person or corporation aforesaid was without jurisdiction, or that it was void.

VII. And defendants deny that the law of this state in pursuance of which the assessment upon plaintiff was made, passed April 23, 1866, and entitled as described in plaintiff's complaint, is in violation of the Constitution or laws of the United States in any respect whatever.

VIII. And defendants deny that the plaintiff or any other person or persons or corporations have ever sustained any damage whatever by reason of any of the acts of these defendants as a board of assessors, or in any other way or manner whatever.

And defendants deny any knowledge or information sufficient
35 cient to form a belief whether any or all of the persons or corporations or personal representatives of the deceased persons mentioned in the complaint have ever duly or in any manner assigned or transferred to the plaintiff herein their or each or any part whatever of their alleged claims against the defendants by reason of the premises alleged in the complaint, or at all, in any manner or for or by any reason.

Second. And for a second and further and separate defence and answer to the complaint of the above plaintiffs, the defendants allege that during all the times mentioned in the complaint of the plaintiff they were assessors composing the board of assessors of the city of Albany. That as such assessors or board of assessors as aforesaid they had full and complete jurisdiction over the person of the plaintiff and each and all the persons, corporations, and estates mentioned and described in the complaint of the plaintiff, and they had jurisdiction as aforesaid in respect to such persons, corporations, and estates in respect to their property and ownership of the
36 shares of stock in the banking association mentioned in the complaint of the plaintiff. And they further allege, that in determining the value of the shares of stock in said banking association, held by the plaintiff and by the other persons and corporations and estates mentioned in the complaint, the defendants, and each of them, acted in a judicial character, and their actions in all

those aforesaid respects were judicial in their nature and character insomuch that the defendants are not in any manner responsible to plaintiff for or by reason of any of their acts in the premises done or performed, all of which were done and performed in good faith and in the full belief that they were acting properly and in the honest discharge of their duty, and they allege that they did so act and decide.

Wherefore they demand that the complaint of the plaintiffs may be dismissed with costs.

PECKHAM & TREMAIN,
Defendants' Attys., Albany, N. Y.

37 ALBANY COUNTY, *ss.*

Edward Brennan, being duly sworn, says that he is one of the defendants above named, and has heard read the foregoing answer, which is true to his own knowledge, excepting as to those matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

EDWARD BRENNAN.

Sworn before me, August 11, 1875.

LEWIS B. HALL,
Notary Public, Albany Co., N. Y.

38 At a special term of the supreme court, held at the City Hall, in the city of Albany, on the 2d day of October, 1876. Present, Hon. A. M. Osborn, justice.

CHAUNCEY P. WILLIAMS
against
WILLIAM J. WEAVER & ORS.

On reading and filing the annexed consent, and on motion of Hand, Hale & Swartz, attorneys for plaintiffs, it is ordered that this cause be and the same hereby is referred to Hon. Augustus Schoonmaker, jr., of Kingston, as sole referee to hear and determine the issues therein, with ten dollars costs to abide the event.

39 Supreme Court.

CHAUNCEY P. WILLIAMS
agst.
WILLIAM J. WEAVER, EDWARD Brennan, and Robert H. Weir.

I, Augustus Schoonmaker, jr., referee in this action, having been attended by the counsel for the respective parties, and having heard their proofs and allegations and duly considered the same, do find, decide, and report as follows:

First. I find the following facts: that prior to and during the year 1874, the National Albany Exchange Bank was a banking as-

sociation duly organized under the general banking laws of the United States, namely, the act of Congress approved June 3, 1864, entitled an act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof, and was located and carried on business in the Sixth ward of the city of Albany. The capital of the bank was three hundred thousand dollars in the year 1874, and the
40 same, or an amount equivalent thereto, was all invested in bonds of the United States for the purpose of procuring circulating notes, under the act of Congress aforesaid. The shares were one hundred dollars each—the surplus one hundred and fifty-six thousand two hundred and seventy-five dollars, and during the period for making assessments in 1874, that is to say, from May 1 to September 1, said shares were of the actual value of at least one hundred and thirty dollars each. That the plaintiff, during said period, was the owner and holder of four hundred and five shares of the capital stock of said bank.

2. That the defendants were, during the year 1874, and have ever since been, the assessors of the city of Albany, constituting the board of assessors of said city.

3. That the several persons and corporations mentioned in the second count of the complaint in said year 1874 owned and were assessed by the defendants, as such assessors, for the number of shares respectively of the stock of said association set forth in said second count.

4. That the defendants, as such board of assessors, did
41 sign and certify the assessment-rolls for the Sixth ward of the city of Albany, including said assessment of the plaintiff and of said persons and corporations mentioned in the second count of the complaint, in the form prescribed by law, namely, by chapter 86 of the laws of 1850, and did in November, 1874, deliver the same to the supervisor of said Sixth ward, who delivered the same to the board of supervisors of the county of Albany at their next meeting, held in the same month. That the said board of supervisors annexed to the name of the plaintiff upon said assessment-roll, on account of and based upon said assessment of said shares, a tax of $1,820.50, and to the names of the persons and corporations mentioned in the second count of said complaint respectively, the several amounts mentioned in said second count as taxes on account of their respective assessments on the value of their shares of stock in said banking association, and delivered said assessment-roll to the receiver of taxes of the city of Albany on or before the tenth day of December, 1874, having first annexed thereto their warrant, under their hands and seals, commanding said receiver to
42 collect the sums therein mentioned as alleged in the complaint; and that the said receiver did thereupon cause notices to be published and served, and issued his warrant to the marshal of said city, as alleged in said complaint.

5. That the said marshal, under and in pursuance of said warrant to him issued by the said receiver of taxes, and in consequence of the said assessments, did, on or about the 30th day of April, 1875, levy on and seize certain national bank bills belonging to plaintiff, amounting to and of the value of $1,908.42, and did also levy on and seize certain other bank bills the property respectively of the persons and corporations mentioned in the second count of said complaint, and amounting in the aggregate to and of the value of $11,130.72, and that the amount of the bills so levied on and seized belonging to each of said persons and corporations is correctly set forth in said second count of the complaint, and that said bank bills of plaintiff and said other persons and corporations were so levied on and seized without the consent of plaintiff
43 and said other persons and corporations but against his and their protest.

6. That the said persons and corporations mentioned in said second count of the complaint, before the commencement of this action, duly assigned and transferred to the plaintiff all and each of their claims against the defendants, by reason of the matters alleged in the complaint, and that the plaintiff thereby became and is the owner and holder thereof.

7. That the plaintiff was in 1874 a resident of the 14th ward of the city of Albany, and was assessed therein for personal property, and his shares in said National Exchange Bank were assessed to him in the 6th ward of said city, in which the bank was situated.

8. That the defendants assessed all the shares of the said National Albany Exchange Bank at their par value, which was $100 a share, less a deduction of ten per cent. for the assessed value of the real estate owned by the bank, leaving the assessed value of each share $90. The defendants did not inquire as to the actual value
44 of such shares. They assessed the shares to the shareholders in the Sixth ward of said city without treference to their actual residence, in pursuance to the provisions of chapter 761 of the laws of the State of New York of the year 1866.

9. That the defendants assessed the holders of all the shares of the several banks in the city of Albany in said year in the same way; that is, at their par value, less a deduction for the value of the real estate owned by each bank, and did not inquire or endeavor to ascertain the actual or market value of each share.

10. That among the banks of the Sixth ward of the city of Albany was a bank organized under the laws of this state, called the Mechanics and Farmers' Bank, a great majority of the shareholders of which were in 1874 residents of the State of New York. The capital of this bank was $350,000; its surplus was about $710,000; the market value of its shares about $300 each. The shareholders of this bank were assessed and required to pay taxes only on the par value of said shares, which was $100 a share, less the assessed
45 value of its real estate.

11. That both the Mechanics and Farmers' Bank and the National Albany Exchange Bank made their reports in the year 1874 before the first day of September; the former to the superintendent of the banking department of the State of New York, the latter to the comptroller of the corrency at Washington, which reports showed the capital, surplus, and financial condition of said banks respectively as above found, and were published in a public newspaper of the city of Albany prior to September 1st, 1874.

12. That the assessed value of each share of the Mechanics and Farmers' Bank, after deducting the assessed value of the real estate of the bank, was $80, and the amount of tax collected upon each share of the National Albany Exchange Bank (excluding the real estate) was larger than upon each share of the Mechanics and Farmers' Bank, although the shares of the latter bank were of more than double the value of the other.

13. That four of the assignors of the plaintiff, the Commerce Insurance Company, William J. Blackhall, Adam Shields, and
46 Francis Vail were residents of the said Sixth ward in 1874, and that said Shields paid taxes on an assessment for $8,000 of personal property, and said Vail on an assessment for $2,000 of personal property, in addition to the assessments upon their shares of said Exchange Bank in said ward.

14. That there was in 1874 an individual banker doing business under the laws of this state, whose bank was located in the said Sixth ward, and was known as the Hope Banking Company, who resided in the town of New Scotland, and out of the city of Albany. The capital invested in said banking business was $100,000. Neither this bank nor the owner thereof was assessed or taxed in the city of Albany.

15. That the defendants did not, in 1874, assess for purposes of taxes, nor attempt to so assess any individual banker as such in the city of Albany, under the provisions of chapter 761 of the laws of 1866.

16. That there were in 1874 a large number of corporations other than banks owning personal property located in the city of
47 Albany. None of the shareholders of said corporations were assessed on their shares in said corporations. Some of said corporations were assessed and taxed, but none of them were assessed or paid taxes on their entire capital; some of said corporations claimed, and were allowed, deductions by reason of their property being invested in United States securities; most of the holders of shares in said corporations were residents of this state.

17. That there were in the city of Albany in 1874, several building, mutual loan, and accommodating fund associations founded under and in pursuance of chapter 122 of the laws of 1851. Some of the associations had a considerable amount of money loaned on bonds and mortgages. One of them (No. 4) had almost $50,000 so loaned on bond and mortgage. None of said associations were as-

sessed or taxed in 1874, nor were any of the shareholders or members of such associations assessed or taxed on their shares or interests therein.

18. That real estate in the city of Albany in the year 1874 was assessed for the purpose of taxation at only about forty or fifty per cent. of its actual value.

19. That there was in 1874, in the city of Cohoes, Albany
48 county, a bank called The Manufacturers' Bank, organized under the laws of this state, the shares of which were actually worth their par value, which were assessed by the assessors of Cohoes for the purposes of taxation at only fifty per cent. of their par value. Personal property and real estate in said city of Cohoes were, in the year 1874, assessed for the purpose of taxation at only one-third of their actual value.

20. There was in the city of Schenectady, in the State of New York, in 1874, a bank organized under the laws of this state, called The Schenectady Bank, the shares of which were worth fifteen per cent. above par, which were assessed for the purposes of taxation to the shareholders thereof at only 50 per cent. of their par value. Personal property in said city of Schenectady was in said year assessed at only about one-third of its actual value.

21. There was in 1874, in the city of Binghampton, in this state, a bank organized under the laws of this state, called The Susquehanna Valley Bank, the capital of which was $100,000, and
49 its surplus about $34,000, the shares of which were assessed for the purposes of taxation at twenty-five per cent. of its capital and surplus, after deducting the value of its real estate. Personal property in said city was in said year assessed for such purposes at only about one-fourth of its value.

22. That there was in 1874, in the village of Amsterdam, in this state, a bank organized under the laws of this state, called The Manufacturers' Bank, the shares of which were worth par, which were assessed for purposes of taxation at forty per cent. of the par value thereof, and personal property in said village was in said year assessed at only forty per cent. of its par value.

23. That there was in 1874, in the city of Utica, a bank organized under the laws of the state, called The Oneida County Bank, the shares of which were worth twenty per cent. above par, which were assessed for purposes of taxation at only fifty per cent. of the par value thereof, and personal property in said city of Utica
50 was in said year assessed for purposes of taxation at only one-seventh of its actual value.

24. That there was in the city of New York, in 1874, a corporation called The United States Trust Company, the capital of which was two millions of dollars, and the shareholders of which were not assessed or taxed on their shares, but the company was assessed and taxed only on $600,000 personal property, and $400,000 for real

estate. The remainder of its capital and surplus were exempted by reason of being invested in United States bonds.

25. There was also in the city of New York, in 1874, a corporation called The National Trust Company, the capital of which was one million dollars, and which held deposits amounting to $3,500,000. The shareholders of this corporation, of whom a large portion resided in the State of New York, were not assessed or taxed upon the value of their shares. And said corporation was entirely exempted from taxation for personal property by reason of
51 its investment in United States government securities.

26. That personal property in the State of New York in 1874 was assessed at unequal rates in the various counties of the state, ranging from one-third or less of its actual value in some counties to about four-fifths of its actual value in others.

27. That the shares of banks, national and state, were the only kind of personal property which in 1874 was assessed for purposes of taxation by special list separate from the other personal property of the owner or persons assessed, and bank shares were assessed in that manner throughout the state.

28. That persons indebted were by the laws of the State of New York entitled to be allowed a deduction of their indebtedness from the amount of their personal property, but by the construction given to these laws by the courts, owners of bank shares were not entitled to such reduction from the value of their shares. No application for such reduction however was made by the plaintiff or his assignors.

52 29. That in the case of all corporations other than banks, the corporation itself was in 1874 liable to assessment and the shareholders thereof were not liable to assessment for purpose of taxation, and such other corporations were entitled by law to a deduction from the assessed valuation of their personal property, of the amount of their indebtedness and also of the amount of their investment in United States bonds.

30. That the defendants as assessors of the city of Albany did not in 1874 examine the records in the county clerk's office nor the records in the surrogate's office for the purpose of ascertaining property subject to taxation, nor did they make inquiries as to the rate at which moneyed capital in the hands of individual citizens of the state was assessed or taxed in the State of New York outside of the city of Albany.

31. That the assessment of the shares in the several banks located in the city of Albany in 1874 being based upon the par value of the shares without reference to the surplus of the banks, the shares of the plaintiff and his assignors in the National Albany Exchange Bank were assessed at a higher rate in proportion to
53 their actual value, inclusive of surplus, than the shares of the aforesaid Mechanics and Farmers' Bank; and by reason of such mode of assessment the amount collected by taxation from

the plaintiff and his said assignors upon their said shares was larger in proportion to the actual value of the shares than the amount collected by taxation from the owners of shares of said Mechanics and Farmers' Bank in proportion to the actual value of those shares.

32. That the defendants, as such assessors, in making the assessments hereinbefore found, upon the shares held by the plaintiff and his assignors in the National Albany Exchange Bank, had jurisdiction of the property and of the persons and corporations assessed and acted in good faith and without malice, and their proceedings were regular.

As conclusions of law I find and decide that the defendants are not liable in this action by reason of any of the matters or things proven herein and that said defendants are entitled to judgment, dismissing the complaint with costs.

Dated June 15th, 1877.

A. SCHOONMAKER, JR., *Referee.*

54 Supreme Court, Albany County.

CHAUNCEY P. WILLIAMS
agst.
WILLIAM J. WEAVER, EDWARD BRENNAN, & Robert H. Weir.

Judgment June 26, 1877.
Peckham & Tremain, def'ts' att'ys.

This action having been duly referred to Hon. Augustus Schoonmaker, jr., to hear and decide, and the referee having made his report dismissing plaintiff's complaint with costs, and ordering judgment for defendants, now, on motion of Peckham & Tremain, attorneys for the defendants, it is adjudged and decreed that the complaint of the plaintiffs be, and it hereby is, dismissed, and that the defendants recover of the plaintiffs the sum of nine hundred and thirty-five dollars and eighty cents, their costs and disbursements in this action.

W. E. HASWELL, *Clerk.*

Supreme Court.

CHAUNCEY P. WILLIAMS, APPELLANT,
agst.
WILLIAM J. WEAVER, EDWARD BRENNAN, and Robert H. Weir, Respondents.

GENTLEMEN: Take notice that the appellant appeals to the general term of the supreme court from the judgment of the supreme court herein entered in the clerk's office of the county of Albany

on the 26th day of June, 1877, and from the whole of said judgment.

Dated July 24th, 1877.

Yours, &c., HAND, HALE, & SWARTZ,
Attorneys for the Appellant.

To the clerk of the county of Albany and to Peckam & Tremain, attorneys for the respondent.

56 Supreme Court.

CHAUNCEY P. WILLIAMS
against
WILLIAM J. WEAVER & ORS. } Bill of exceptions.

This action was brought by the plaintiff against the defendants, who were, in 1874, assessors of the city of Albany, to recover damages alleged to have been sustained by plaintiff and his assignors named in the complaint by reason of an assessment made by defendants in 1874 upon the shares of stock of plaintiff and his said assignors in a national bank in the city of Albany. The pleadings are contained in the judgment-roll, a copy of which is to be annexed hereto.

The issues in said action were duly referred to Hon. Augustus Schoonmaker, jr., as sole referee, to hear and decide the same. The case was brought to trial before said referee on the 17th day of January, 1877.

Upon said trial the plaintiff was called and examined as a witness in his own behalf, and gave evidence tending to establish the facts found by the referee in his report (contained in said judgment-roll), by his findings of fact therein, numbered respectively, first, fifth, sixth, and seventh.

57 The assessment-roll of the Sixth ward of the city of Albany for 1874, and the papers annexed thereto, were put in evidence, and the defendant, William J. Weaver, was called as a witness by the plaintiff, and by said assessment-roll and the evidence of said Weaver, were proved the facts found by the referee by the findings in said report, numbered second, third, fourth, eighth, ninth, tenth, twelfth, thirteenth, fifteenth, sixteenth, eighteenth, thirtieth, and thirty-first. Various witnesses were called on the part of plaintiff, and proof given tending to establish the facts found by said referee in the findings in said report, numbered eleventh, fourteenth, seventeenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-eighth, and twenty-ninth.

Sterling G. Hadley was sworn as a witness for plaintiff, and testified that he was one of the state assessors, and was such in 1874; that in the course of his duties he made inquiry as to the rate of assessment of real and personal property throughout the state.

The board consisted of himself, James A. Briggs, and John
58 S. Fowler. That the table which he produced was prepared by said assessors, and showed the rate at which real and personal property was assessed in the year 1874 and 1875. That it was prepared from the official returns in the comptroller's office. Witness said he had inserted in the table in ink the average rate of assessment of personal estate, as nearly as he could arrive at it, the rate at which each of the counties was assessed in 1874 for personal property. That they took the testimony of a great number of witnesses, and in arriving at the valuation of a county, they considered the amount of banking capital, together with the rate at which it was assessed, as well as other property. This table was offered in evidence. It was objected to, not on the ground that it was not properly proved or the best evidence, but as immaterial, the table was received in evidence. It showed the rate of assessment of personal property in the different counties of the State of New York to be as hereinafter stated in the first additional finding of the referee. Witness also produced another table contained in report made by said assessors for 1874, which the witness testified was
59 made up from enquiries made by the state assessors, which was offered and received in evidence under the same objection. No testimony was offered on the part of the defendants.

It was admitted that at the time this assessment was made there had been no judicial decisions to the knowledge of the assessors upon the question as to what was the proper standard to be adopted by the assessors in assessing the value of shares of capital stock in banks, state or national.

It was also admitted that the assessors acted in good faith in making the assessment. But it was not admitted that they had jurisdiction to make the same. And thereupon, after hearing said evidence, the said referee duly made his report in writing above referred to and contained in the judgment-roll, a copy of which is to be annexed hereto. To said report the plaintiff duly filed and served the following exceptions:

Supreme Court.

CHAUNCEY P. WILLIAMS *agst.* WILLIAM J. WEAVER AND OTHERS. } Exceptions to report of Referee.

The above-named plaintiff hereby excepts to the report of the referee herein, bearing date June 15th, 1877, and specifies the following exceptions thereto:

60 1st. He excepts to the finding that the defendants as assessors of the city of Albany, in making the assessments referred to in said report, upon the shares held by the plaintiff and his assignors in the National Albany Exchange Bank, had jurisdiction of the property and of the persons and corporations assessed,

and acted in good faith and without malice and their proceedings were regular.

2nd. He excepts to the finding and conclusion of law that the defendants are not liable in this action by reason of any of the matters or things proven herein.

3d. He excepts to the conclusion of law that defendants are entitled to judgment dismissing the complaint with costs.

4th. The plaintiff excepts to said report for that it does not find and decide that the defendants as such assessors, in assessing such shares of plaintiff and his assignors, acted without jurisdiction or authority in that they disregarded the condition and restriction upon which such assessments for taxation were allowed by the laws of the United States, namely, that the taxation thereof should not be at a greater rate than was assessed upon other moneyed capital in the hands of individual citizens of this state.

61 5th. He also excepts to said report for that it does not find and decide that the defendants, in making such assessments on said shares, acted without jurisdiction or authority in that they did not include said shares in the valuation of the personal property of the owner or holder of said shares as authorized and permitted by the laws of the United States, but made special assessments of said shares to the owners thereof separate and distinct from the assessments of the owners thereof for other personal property.

6th. He excepts to the said report for that it does not find and decide that the law of the State of New York under which said assessments were made, namely, the act entitled "An act authorizing taxation of stockholders of banks and the surplus funds of savings banks, passed April 23d, 1866, is repugnant to and a violation of the Constitution and laws of the United States, and void so far as it authorizes the taxation of owners of shares of national banking associations, in that it provides for a separate and distinct assessment upon the stockholders in such banking associations upon their shares therein in the town or ward where such banking

62 association is located and not elsewhere, whether such stockholder reside in such town or ward or not; and also in that it permits no deduction for the indebtedness of the owner from the assessment of said shares, such deduction for the indebtedness of the owner thereof being allowed from assessments upon all kinds of personal property and moneyed capital, except bank shares.

7th. The plaintiff also excepts to said report for that it does not find and decide that the plaintiff is entitled to recover of the defendants the amount claimed in the complaint with interest and costs.

Dated June 26, 1877.

HAND, HALE & SWARTZ,
Attys. for Plff.

Afterwards, upon the settlement of the case, the referee found, in addition to the findings in said report—

1. That personal property in the different counties of the State of New York was, in the year 1874, assessed on the average at the following rate or percentage of its actual value:

Albany	70 per cent.	Allegany	50 per cent.
Broome	35 "	Cattaraugus	33 "
Cayuga	65 "	Chautauqua	52 "
Chemung	36 "	Chenango	38 "
63 Clinton	38 "	Columbia	72 "
Cortland	36 "	Delaware	38 "
Dutchess	76 "	Erie	75 "
Essex	36 "	Franklin	78 "
Fulton	34 "	Genessee	66 "
Greene	35 "	Hamilton...no report from	
Herkimer	36 "	Jefferson	39 "
Kings	88 "	Lewis	34 "
Livingston	36 "	Madison	44 "
Monroe	36 "	Montgomery	35 "
New York	85 "	Niagara	68 "
Oneida	38 "	Onondaga	40 "
Ontario	76 "	Orange	78 "
Orleans	50 "	Oswego	54 "
Otsego	37 "	Putnam	66 "
Queen's	67 "	Rensselaer	66 "
Richmond	32 "	Rockland	68 "
St. Lawrence	38 "	Saratoga	37 "
Schenectady	40 "	Schoharie	40 "
Schuyler	26 "	Seneca	78 "
Steuben	58 "	Suffolk	66 "
Sullivan	40 "	Tioga	43 "
Tompkins	41 "	Ulster	55 "
Warren	40 "	Washington	58 "
Wayne	58 "	Westchester	78 "
Wyoming	60 "	Yates	44 "

2nd. That under the laws of the State of New York owners of bank stock were not entitled, in 1874, to any deduction
64 from the assessed value of their shares by reason of the capital or property of the bank, or any portion thereof, being invested in United States securities.

Dated August 10th, 1877.

HAND, HALE & SWARTZ,
Attys. for Plff.
A. SCHOONMAKER, JR., *Referee.*

At a general term of the supreme court, held for the State of New York, at the Town Hall in the village of Saratoga Springs, on the fourth day of September, 1877.

Present, Hon. W. L. Learned, presiding justice; Hon. Augustus Bockes, Hon. Douglas Boardman, associate justices.

65 CHAUNCEY P. WILLIAMS
agst.
WILLIAM J. WEAVER ET AL.

This case coming before this court upon appeal by the plaintiff from a judgment entered in the clerk's office of Albany county, upon the report of a referee dismissing the complaint of the plaintiff, and ordering judgment for the defendant with costs, and after hearing Mr. Matthew Hale, of counsel for plaintiff, in favor of reversing such judgment, and Mr. R. W. Peckham, of counsel for defendants, opposed, and due deliberation being had thereon, it is *Ordered*, that the judgment appealed from be and the same hereby is in all things affirmed, with costs.

A copy. JAMES W. HARTON, *Clerk.*

66 Supreme Court.

CHAUNCEY P. WILLIAMS
agst.
WILLIAM J. WEAVER ET AL.
Judgment, Sept. 7th, 1877.
Peckham & Tremain, defts.' attys.

This cause having been before the general term of this court upon appeal from the judgment entered upon the report of the referee dismissing the complaint of the plaintiff herein with costs, and the general term of this court, after hearing the parties, having affirmed such judgment, with costs: Now, on motion of Peckham & Tremain, attorneys for defendants, it is adjudged that the judgment entered in the clerk's office of Albany county, in favor of defendants, be and the same hereby is in all things affirmed, together with the sum of seventy-two $\frac{94}{100}$ dollars costs, in favor of defendants and against the plaintiff.

WM. E. HASWELL, *Clerk.*

67 Supreme Court.

CHAUNCEY P. WILLIAMS, APPELLANT,
against
WILLIAM J. WEAVER, EDWARD BRENNAN, and Robert H. Weir, Respondents.

Gentlemen: Take notice that the appellant appeals to the court of appeals from the judgment of the supreme court herein entered in the clerk's office of the county of Albany on the 7th day of September, 1877, and from every part thereof.

Dated September 24th, 1877. Your's, &c.,
HAND, HALE, & SWARTZ,
Attorneys for the Appellant.

To the clerk of the county of Albany, and to Peckham & Tremain, esqs., attorneys for the respondent.

68 STATE OF NEW YORK,
CITY AND COUNTY OF ALBANY, CLERK'S OFFICE. } *ss.*

I, William E. Haswell, clerk of the city and county of Albany, and of the courts of record thereof, do hereby certify that I have compared the annexed copies of judgment-roll, case and exceptions, and notice of appeal, with the originals thereof on file in this office, and that the same are correct transcripts therefrom, and of the whole of said originals.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this 27th day of September, 1877.

[SEAL.] WM. E. HASWELL, *Clerk.*

(Endorsed:) Supreme court. Chauncey P. Williams against William J. Weaver et al. Copy judgment-roll, exceptions, and notice of appeal. Filed Oct. 1, '77.

69 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judges of the Court of Appeals of the State of New York, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court of appeals, before you, or some of you, being the highest court of law or equity of the said State of New York in which a decision could be had in the said suit between Chauncey P. Williams, appellant, and William J. Weaver, Edward Brennan, and Robert H. Weir, respondents, wherein was drawn in question the validity of a statute of and authority exercised under the State of New York, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of their validity, and wherever also a title, right, privilege, or immunity was claimed under the Constitution and a statute of the United States, and the decision was against the title, right, privilege, or immunity specially set up and claimed under the Constitution and such statute of the United States, a manifest error hath happened, to the great damage of the said Chauncey P. Williams, as by his complaint appears. We
70 being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record of proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 4th day of Decr., in the year one thousand eight hundred and seventy-eight.

[SEAL.] CHARLES MASON,
Clerk of the Circuit Court of the United States for the Northern District of New York.

71 (Endorsed:) Supreme Court of the United States. Chauncey P. Williams, plaintiff in error, against William J. Weaver and others, defendants in error. Writ in error lodged in pursuance of the statute of the United States in such case made and provided, for the above-named plaintiff in error. Matthew Hale, attorney for plaintiff in error, 25 North Pearl street, Albany, N. Y. I hereby allow the within writ of error. S. E. Church, Ch. J. Court of Appeals. Albany, December 2d, 1878.

72 Supreme Court of the United States.

CHAUNCEY P. WILLIAMS, PLAINTIFF IN ERROR,
against
WILLIAM J. WEAVER, EDWARD BRENNAN, AND Robert H. Weir, Defendants in Error.

Of October term, in the year of our Lord one thousand eight hundred and seventy-nine.

Afterward, to wit, on the first Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Chauncey P. Williams, by Matthew Hale, his attorney, and says that in the record and proceedings aforesaid, and also in said judgment, there is manifest error in this, to wit, that in the record aforesaid it appears that the judgment aforesaid was given for the said defendants in error against the said plaintiff in error, whereas, by the law of the land, the said judgment ought to have been given for the said plaintiff in error and against the said defendants in error; and also in this, to wit, that said plaintiff in error claimed that he was entitled, in the Court of Appeals of the State of New York, to a reversal
73 of the judgment of the Supreme Court of the State of New York, on the grounds, (1) that the court below erred in holding that the defendants, as assessors of the city of Albany, in making the assessments referred to in said report, upon the shares held by the plaintiff and his assignors in the National Albany Exchange Bank, had jurisdiction of the property and of the persons and corporations assessed; (2) that the court also erred in holding that the defendants are not liable in this action by reason of any of the matters or things proven herein; (3) that the said court erred in that it did not hold that the defendants, as such assessors, in assessing such shares of plaintiff and his assignors, acted without jurisdiction or authority, in and that they disregarded the condition and restriction upon

which such assessments for taxation were allowed by the laws of the United States, namely, that the taxation thereof should not be at a greater rate than was assessed upon other moneyed capital in the hands of individuals citizens of this state; (4) that the said court erred in that it did not hold that the defendants, in making such assessments on said shares, acted without jurisdiction or authority in that they did not include said shares in the valuation of the personal property of the owner or holder of said shares, as au-
74 thorized and permitted by the laws of the United States, but made special assessments of said shares to the owners thereof, separate and distinct from the assessments of the owners thereof for their other personal property; (5) that the said court erred in that it did not hold that the law of the State of New York, under which said assessments were made, namely, the act entitled "An act authorizing the taxation of stockholders of banks and the surplus funds of savings banks," passed April 23rd, 1866, is repugnant to and a violation of the Constitution and laws of the United States, and void, so far as it authorizes the taxation of owners of shares of national banking associations, in that it provides for a separate and distinct assessment upon the stockholders in such banking associations, upon their shares therein in the town or ward where such banking association is located and not elsewhere, whether such stockholder reside in such town or ward or not, and also in that it permits no deduction for the indebtedness of the owner from the assessment of said shares, such deduction for the indebtedness of the owner thereof being allowed from assessments upon all kinds of personal property and moneyed capital, except bank shares; and that the said court of appeals should have so held and decided, and should have reversed the judgment of the Supreme Court of the State of New York on said grounds, but
75 the said court of appeals in fact decided the contrary thereof and affirmed the said judgment of the Supreme Court of the State of New York.

And the said Chauncey P. Williams prays that the judgment of the court of appeals aforesaid, and the judgment of the Supreme Court of the State of New York aforesaid, may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he has lost by occasion of the said judgment.

MATTHEW HALE,
Attorney for Plaintiff in Error.

76 UNITED STATES OF AMERICA.

To William J. Weaver, Edward Brennan, and Robert H. Weir, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the 2d Monday of October, 1879, pursuant to a writ of error, filed

in the office of the clerk of the Court of Appeals of the State of New York, wherein Chauncey P. Williams is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Sanford E. Church, chief judge of the Court of Appeals of the State of New York, this 6th day of December, in the year of our Lord one thousand eight hundred and seventy-eight.

S. E. CHURCH, *Ch. J. Court of Appeals.*

(Endorsed:) Supreme Court of the United States. Chauncey P. Williams, plaintiff in error, against William J. Weaver et al., defendants in error. Citation. Matthew Hale, att'y for plaintiff in error, Albany, N. Y. Due and personal service of a copy of the within citation, and 30 days' notice to the adverse party is admitted, this 6th day of December, 1878. G. W. Miller, att'y for defendants, Albany, N. Y.

77 Court of Appeals.

CHAUNCEY P. WILLIAMS, APPELLANT,
vs.
WILLIAM J. WEAVER ET AL., RESPONDENTS.

Matthew Hale, for appellant.
R. W. Peckham, for respondents.

MILLER, J.—It may be assumed as entirely clear that the basis of assessment against the owners of shares of stock of the Albany National Exchange Bank was erroneous. These assessments were not made on the value of the shares of said stock, as required by law (S. L., 1866, chap. 761), but were made at the "par value," without regard to their real value in the market. The effect of such a valuation necessarily must be to make great inequality, and, as the record in this case shows, to impose upon the shareholders, when the plaintiff represents a greater burden of taxation than that which would properly belong to them. But for an erroneous assess-
78 ment, the assessors, while acting in that capacity, are not individually liable, and, therefore, there is no remedy by action against them for the grievance complained of by the plaintiff. That class of public officials are charged with duties which require the exercise of judicial functions, and when they are called upon thus to act they are protected from the consequences which may flow from any error they may commit. Surrounded as these officers are by great difficulties in the discharge of their official duties, the law shields them when acting within their jurisdiction. In order to establish an individual liability, it must be made to appear against the assessors not only that the assessment was erroneous,

but that such assessors had no jurisdiction whatever in laying the tax. If they had jurisdiction both of the person taxed and the subject-matter, that is, the property assessed, then their acts partake of a judicial character, and however erroneous or unequal the
79 tax may be, do not fix an individual liability upon them, at least when they act in good faith and without malice. And it is conceded that they so acted here. If on the contrary there is an entire lack of jurisdiction, and they make the assessment without it, they are clearly liable.—(*National Bank of Chemung vs. City of Elmira*, 53 N. Y., 49; *Dorwin vs. Strickland*, 57 N. Y., 492; *Overing vs. Foote*, 65 N. Y., 263.) The distinction between an erroneous and an illegal assessment is clearly stated in *Weaver vs. Defendorf*, 3 Den., 117, and in *National Bank of Chemung vs. City of Elmira*, supra. The former case was an action by a clergyman for an alleged refusal to allow him the statutory exemption; it appeared that he had more property than the amount of the exemption, for which he was liable to be taxed. It was held that the assessors had jurisdiction to act, and were not liable for making the assesment too high, however erroneous their decision might have been. In *National Bank of Chemung vs. City of Elmira, supra, Church,*
80 *Ch. J.*, cities *Barhyk vs. Shepherd*, 35 N. Y., 238, and the case last cited, and commenting on the latter says: "The plaintiff owned property to the amount of $2,500, and was assessed $1,050. The assessors had jurisdiction, therefore, to assess him for some amount, and whether they assessed him too high, in consequence of not allowing the exemption, or from an erroneous valuation of his property, was immaterial. In either case their decision was conclusive within all the authorities, and the case was rightly decided." There is no question that the assessors did have jurisdiction of the person of the plaintiffs, and that they had jurisdiction to make some assessment on the shares of the plaintiffs; but the point urged against the validity of the assessment is that they were taxed at a greater rate than was assessed upon other moneyed capital. Within the rule, as laid down by Church, Ch. J., the assessment was not invalid, and although the principle adopted
81 as the basis of the valuation and assessment of shares of bank stocks was erroneous, the defendants are not liable in this action.

If we are right in the views expressed, it is not necessary to examine the various propositions urged by the plaintiffs' counsel, to the effect that the defendants disregarded the restrictions imposed by law.

The plaintiffs claim that the defendants violated the restrictive clause of the United States (U. S. R. S., § 5,219) which makes provision in regard to the mode of taxation of bank shares, and declares "that the taxation shall not be at a greater rate than is assessed upon the other moneyed capital in the hands of individual citizens," &c. This clause was the subject of consideration in the case of *The*

People vs. Commissioners, 4 Wal., 244, 256; and it was held, that "it required that no greater portion or percentage of tax on the valuation of the shares shall be levied than upon other moneyed taxable capital in the hands of the citizens."—(See, also, *The*
82 *People vs. Dolan*, 36 N. Y., 59.) As already stated, the error complained of was in placing a valuation upon the shares, and there is no pretence that the shareholders were assessed at a greater rate upon their shares, as valued, than upon other moneyed taxable capital. For the reasons stated, the point last considered cannot be sustained.

It is claimed that the assessment in question was void and in violation of the laws of the United States, because it was done by a separate list applied to no other kind of property than bank stock. There is no finding to the effect that this was done. The assessment-roll does not appear in the printed case, and it is not alleged in the complaint that the assessment was made upon a separate or special list, but on the contrary, it is alleged, in substance, that the assessment and tax were annexed to the stockholders' names,
83 as assessed, on the regular assessment-roll. It may have been the case, and perhaps it may be assumed that the assessors, in making up the assessment-roll, placed the value of the shares in a separate item in the column in which personal property is placed. This, we think, would be a substantial compliance with the provision of the federal statute, which declares that nothing in the act shall be construed to prevent shares of the stockholders of banks "from being included in the valuation of the personal property" of the owner (13 U. S. Stat. at Large, 111), nor with the provision of the state statute requiring this to be done.—(*People vs. Dolan*, 36 N. Y., 59, 71.) Of course, as to the stockholders who were non-residents of the ward, and the residue of whose personal property was not taxable therein, it could not be included. All the questions raised as to the validity of the state statute (chap. 76, S. L. of 1866), authorizing the assessment of bank stock for
84 the purposes of taxation, have been already fully determined by the adjudications of the courts, as will be seen by a reference to the decisions.

That this species of property may be separated from the person of the owner and a *situs* given it for the purposes of taxation, in accordance with the banking act, is held in *Tappan vs. Merchants' National Bank*, 19 Wal., 490.

That the state, under the banking act of the United States, may tax bank shares, irrespective of the fact that the capital of the bank is invested in U. S. securities, exempt from taxation, is also established law.—(*Van Allen vs. The Assessors*, 3 Wal., 573; *National Bank vs. Commonwealth*, 9 Wal., 353.) That the assessment of this species of property is not subject to the allowance of debts of an individual, as a deduction from the valuation of his or her personal property, and that a refusal to allow such deduction, in the case of

bank shares, does not violate the law of Congress, as to the
85 rate of taxation, is decided in *The People vs. Dolan*, 36 N. Y., 259.

We think that the act of Congress was not intended to curtail the powers of the states on the subject of taxation, or to prohibit the exemption of this particular kind of property, but to protect capital invested in national banks, under its authority, from unfavorable and unjust discrimination by the state authorities, and from being taxed at a greater rate than like property similarly situated.—(Adams vs. Nashville, 95 U. S., 5 Otto, 19.)

The questions presented, as we have seen, are mainly covered by authority, and a further discussion of them is not required. The subject of taxation is beset with complications and difficulties, and the wisdom of man has failed to devise a complete and perfect system, which would dispense equal and exact justice to all parties alike. The most that can be expected of any system is to
86 approximate as near as possible to absolute equality. The application of the taxing power, under the act of Congress which authorized the establishment of national banks, required new rules and regulations in regard to the valuation of the species of property thereby created, and that the system of taxation should be adjusted, in reference to the same. In the performance of the duties imposed upon the assessors, in making the assessment, in this case, we are unable to discover that they have so far failed to follow the provisions of law or violated any principle thereby established, as to render them personally liable.

The judgment should be affirmed.

"All concur."

A copy.

H. E. SICKELS,
Reporter, per C.

(Endorsed:) Williams vs. Weaver. Opinion, Miller, J.

87 Supreme Court of the United States.

CHAUNCEY P. WILLIAMS
against
WILLIAM J. WEAVER, EDWARD BRENNAN, and Robert H. Weir.

Know all men by these presents, that we, Chauncey P. Williams and William G. Thomas and Lansing Merchant, of the city of Albany, county of Albany and State of New York, are held and firmly bound unto the above-named William J. Weaver, Edward Brennan, and Robert H. Weir, in the sum of two thousand dollars, to be paid to the said Weaver, Brennan, and Weir, their and each of their heirs, executors, and administrators, to which payment well and truly to be made we bind ourselves and each of us jointly and

severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this 6th day of December, A. D. 1878.

Whereas the above named Chauncey P. Williams has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled action by the Court of Appeals of the State of New York, affirming a judgment of the Supreme Court of the State of New York, rendered
88 on the 7th day of September, 1877, affirming another judgment of the supreme court rendered on June 26th, 1877, in favor of the above-named Weaver, Brennan, and Weir, against the said Chauncey P. Williams for the sum of nine hundred and thirty-five and $\frac{80}{100}$ dollars, and for one hundred and twenty-one and $\frac{44}{100}$ dollars costs of appeal. Now, therefore, the condition of this obligation is such, that if the above-named Chauncey P. Williams shall prosecute his said writ of error to effect and answer all damages and costs, if he shall fail to make good his plea, then this obligation to be void, otherwise the same shall be and remain in full force and virtue.

C. P. WILLIAMS. [L. S.]
WM. G. THOMAS. [L. S.]
LANSING MERCHANT. [L. S.]

Sealed and delivered in presence of—WM. E. CORNWELL.

STATE OF NEW YORK, }
CITY AND COUNTY OF ALBANY. } *ss.*

On this sixth day of Dec'r, A. D. 1878, personally appeared before me Chauncey P. Williams, Wm. G. Thomas, and Lansing Merchant, to me known to be the individuals described in and who executed the foregoing instrument, and severally acknowledged that they executed the same for the purposes therein mentioned.

WM. E. CORNWELL, *Notary Public.*

89 CITY AND COUNTY OF ALBANY, *ss.*

C. P. Williams, Wm. G. Thomas, and Lansing Merchant, being severally duly sworn, each for himself says that he is a resident and freeholder in the State of New York, and is worth the sum of two thousand dollars over and above all debts and liabilities which he owes or has incurred, and besides property exempt by law from execution.

C. P. WILLIAMS.
WM. G. THOMAS.
LANSING MERCHANT.

Severally subscribed and sworn before me, this 6th day of Dec'r, 1878. WM. E. CORNWELL, *Notary Public.*

90 In the Supreme Court of the United States.

CHAUNCEY P. WILLIAMS, PLAINTIFF IN ERROR,
against
WILLIAM J. WEAVER, EDWARD BRENNAN, AND Robert H. Weir, Defendants in Error.

And afterwards, to wit, on the second Monday of October, 1879, in October term, in the year of our Lord one thousand eight hundred and seventy-nine, the said William J. Weaver, Edward Brennan, and Robert H. Weir, by George N. Miller, their attorney, freely come here into court, and say that there is no error, either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid, and they pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed.

GEO. W. MILLER.
Attorney for Defendants in Error.

91 STATE OF NEW YORK,
COURT OF APPEALS,
CLERK'S OFFICE.

CHAUNCEY P. WILLIAMS
against
WILLIAM J. WEAVER, EDWARD BRENNAN, and Robert H. Weir.

I, Edwin O. Perrin, clerk of the Court of Appeals of the said State of New York, do hereby certify that the annexed papers constitute the original return and the whole thereof, upon which the said court of appeals acted in rendering judgment herein, together with the remittitur and opinion of said court, and the citation, bond, writ of error, joinder, and assignment of error to the United States Supreme Court herein.

In witness whereof, I have hereunto set my hand and affixed my official seal, at the city of Albany, this 11th day of December, A. D. 1878.

[SEAL.]

E. O. PERRIN,
Clerk Court of Appeals, State of New York.

(Endorsed:) Supreme Court of the United States. Chauncey P. Williams against Willliam J. Weaver and others. Return. Matthew Hale, att'y for pl'ff in error, Albany, N. Y.

(Endorsed on cover:) New York C't of Appeals. No. 1047. Chauncey P. Williams, plaintiff in error, vs. William J. Weaver, Edward Brennan, and Robert H. Weir. Filed 18th December, 1878.